SUPREME COURT OF THE UNITED STATES.

No. ~~607~~ 345 186

THE UNITED STATES, PLAINTIFFS,

vs.

JOHN ARWO.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 12, 1872.

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to twenty-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of The United States against John Arwo, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fifth day of February, in the year of our Lord one thousand eight hundred and seventy-two and of the independence of the said United States the ninety-sixth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-ct. int.-rev. stamp affixed and cancelled.]

2 Circuit court of the United States of America for the southern district of New York, in the second circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held at the city of New York, within and for the district and circuit aforesaid, on the third Monday of October, in the year of our Lord one thousand eight hundred and seventy-one, and continued by adjournment to and including the twentieth day of October, in the year of our Lord one thousand eight hundred and seventy-one:

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America within and for the district and circuit aforesaid, on their oath present, that John Arwo, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and seventy-one, with force and arms in and on board of certain vessel, being a brig called the Thomas Owen, belonging in whole or in part to a citizen or citizens of the said United States, whose name or names are to the jurors aforesaid unknown, on the high seas, out of the jurisdiction of any particular State of the said United States, on waters within the admiralty and maritime jurisdiction of the said United States, and within the jurisdiction of this court, with a dangerous weapon, to wit, a dagger of the length of five inches and of the breadth of three-quarters of an inch, in and upon

3 one Sidney Baldwin, then and there being in and on board of said brig called the Thomas Owen, and belonging to the company of said ship, feloniously did commit an assault to the great damage of the said Sidney Baldwin, against the peace of the said United States and their dignity and against the form of the statute of the said United States in such case made and provided.

4 And the jurors aforesaid, on their oaths aforesaid, do further present that the southern district of New York, in the second circuit, is the district and circuit into which the said John Arwo was first brought, and in which he was apprehended for the said offence.

NOAH DAVIS,
U. S. District Attorney.

5 (Indorsed:)

U. S. circuit court. The United States of America vs. John Arwo. Indictment, assault with a dangerous weapon. 4 vol. U. S. St. at Large, p. 115, act of March 3d, 1825, § 22. Noah Davis, U. S. attorney.

A true bill.

DANIEL SLATE,
Foreman.

Filed Oct. 20, 1871.

Filed in open court, the 20 Oct., 1871.

Nov. 6, 1871. The defendant arraigned and indict. read. Def't plead not guilty.

18 . The defendant called on recognizance and appearing same

Nov. 6th, 1871. The defendant tried; verdict, guilty.

18 , sentence.

6 *Plea..*

U. S. circuit court, southern district of New York.

JOHN ARWO
ads.
THE UNITED STATES.

And the said John Arwo in his own proper person comes, and having heard the indictment aforesaid read, and protesting that he is not guilty of the premises charged in said indictment, for plea, nevertheless, saith that he ought not to be compelled to answer to the said indictment:

Because he saith that the supposed offence specified in said indictment, if any such there were, was committed on the high seas, out of the limits of any State or district, and immediately thereupon and on the thirtieth day of May, in the year of our Lord one thousand eight hundred and seventy-one, this defendant, the said John Arwo, then and still being on the said vessel in the said indictment men-
7 tioned, and on the high seas and without the limits of any State or district, was placed in irons and in close confinement on board said vessel as aforesaid, in order that he might be detained in custody and forthcoming to answer any charge that might be lawfully brought against him by reason of said supposed offence; and thereupon and thereafter, the said defendant being all the time detained in custody and in irons and close confinement, the said vessel proceeded on her course, and did not pass or enter within the limits of any State or district until on the second day of June then next ensuing, on which day last aforesaid, the said vessel being destined to the port of New York, arrived and came to anchor within the limits of the eastern district of New York, and then and without the limits of the southern district of New York, and without having entered the southern district of

8 New York, and at a place commonly known as Lower Quarintine, and within the said eastern district, was boarded and taken charge of by the local health officer, and so remained at anchor for the space of five days; that while the said vessel remained so at anchor and was at the place aforesaid, and on the fourth day of June, in the year aforesaid, the said defendant having up to that time and all the time after the said supposed offence, remained in custody and in irons and in close confinement, he, the said defendant, was, by the master of said vessel, by whom he, the said defendant, had been as aforesaid kept in custody on board said vessel, delivered up to certain officers of the State of New York known as the harbor police, and was so delivered up in order that he might be forthcoming to answer any charge that might be preferred against him for the said supposed offence, by which said officers last mentioned, to wit, said harbor police, the said

9 defendant, he being still kept in irons, was then and there, to wit, in the eastern district of New York, and on the day last aforesaid, namely, on the fourth day of June, at said Lower Quarintine, in said eastern district of New York, taken from said ship into the custody of said harbor police, and without any process or warrant from any court whatsoever, brought by said harbor police from said ship to the city of New York, in the southern district of New York, and was then and there delivered into the custody of the United States marshal for the southern district of New York, to whom a warrant was thereafter duly issued, of which the following is a copy, (said warrant being the first warrant, order, or process issued against the defendant,) viz:

10 The President of the United States of America to the marshal of the United States for the southern district of New York, and to his deputies or any or either of them:

Whereas complaint on oath hath been made to me, charging that John Arwo did, on or about the thirtieth day of May, in the year one thousand eight hundred and seventy-one, on the high seas, within the admiralty and maritime jurisdiction of the United States, made an assault upon Sidney Baldwin, one of the crew of the American brig "Thomas Owen," with a dangerous weapon, to wit, a dagger, with intent to kill, contrary to the statute of the United States in such case made and provided:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said John Arwo, and bring his body forthwith before me or some judge or justice of the United States, wherever in the State of New York he may be found, that he may then and there be dealt with according to law for the said offence.

JOHN A. SHIELDS, UNITED STATES COMMISSIONER SOUTHERN DISTRICT OF N. Y.

Given under my hand and seal this fifth day of June, in the year of our Lord one thousand eight hundred and seventy-one.

JOHN A. SHIELDS,
United States Commissioner for the Southern District of New York.

NOAH DAVIS,
U. S. District Attorney.

11 (Indorsed:) U. S. circuit court. The United States of America vs. John Arwo. Warrant to apprehend. Noah Davis, U. S. dist. att'y.

Received June 5, 1871, U. S. marshal's office.
I hereby depute Dawley to execute the within process.
Dated, New York, 1870.

U. S. Marshal.

Pris. arrested & committed for exam't'n to June 8, 1871, at 12 o'clock, in default of $5,000 bail.
June 5th, 1871.

JOHN A. SHIELDS,
U. S. Com'r.

Pris. held on examination to await action of grand jury.
June 8th, 1871.

JOHN A. SHIELDS,
U. S. Com'r.

12 The said defendant, therefor', says, that he was apprehended and first brought into the eastern district of the State of New York, and when he was, as aforesaid, delivered up to said harbor police, said harbor police did not have any warrant issued from said southern district of New York for the arrest of the said defendant, and that he was not apprehended or first brought into the southern district of the State of New York, and that he can be lawfully tried for said supposed offence only within the said eastern district of the State of New York, and that this court hath not jurisdiction to try the said defendant upon the said indictment for the said supposed offence; and this he is ready to verify.

Wherefore, the said John Arwo, prays judgment, and that he may be dismissed from the premises by the court here.

Dated, New York, January 5th, 1872.

H. EDWIN TREMAIN,
Of Counsel for Defendant.

Filed & entered Jan'y , 1872.

13 *Demurrer.*

THE UNITED STATES
vs.
JOHN ARWO.

And the district attorney, who prosecutes on behalf of the United States as to the said plea of the said John Arwo, by him above pleaded, saith that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the United States from prosecuting the said indictment against him, the said John Arwo, and that the said United States are not bound by the law of the land to answer the same; and this the said district attorney, who prosecutes as aforesaid, is ready to verify; wherefore, for want of a sufficient plea in this behalf, he, the said district attorney, on behalf of the United States, prays judgment, and that the said John Arwo may be convicted of the premises of the said indictment specified.

14 NOAH DAVIS,
United States Attorney for the Southern District of New York.

Filed and entered the day of January, 1872.

15 *Joinder.*

THE UNITED STATES
vs.
JOHN ARWO.

And the said John Arwo saith that his said plea by him above pleaded, and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said United States from prosecuting the said indictment against him the said John Arwo; and the said John Arwo is ready to verify and prove the same, as the said court shall here direct and award. Wherefore, inasmuch as the said district attorney, on behalf of the said United States, hath not answered the said plea, nor hitherto in any manner denied the same, the said John Arwo prays judgment, and that, by the court here, he may be dismissed and discharged from the said premises in the said indictment specified.

H. EDWIN TREMAIN,
Of Counsel for Defendant.

Filed & entered the day of January, A. D. 1872.

16

17 *Certificate of division.—Filed & entered January 12th,* 1872.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the twelfth day of January, in the year of our Lord one thousand eight hundred and seventy-two—

Present, the Honorable Lewis B. Woodruff, circuit judge, and the Honorable Charles L. Benedict, dist. judge.

THE UNITED STATES OF AMERICA
against
JOHN ARWO.

And now, upon filing this special plea of the defendant, and the demurrer thereto of the district attorney for the United States, and the joinder of the defendant, the court proceed to hear arguments thereon; upon which hearing the following questions occurred, to wit:

1. Whether the prisoner, having been taken into custody by the master of an American vessel, while on her voyage, upon a charge of having, during the voyage, committed an offence against the United States on board such ship, upon the high seas and out of the
18 limits of any State or district, and first brought, in such custody, into the eastern district of New York, can be tried for such offence in the southern district of New York.

2. Whether the facts stated in the plea show that the southern district of New York is not the district in which the defendant was apprehended within the meaning of the act of March 3d, 1825?

3. Whether the plea discloses that, within the meaning the act of March 3d, 1825, the apprehension of the defendant occurred either upon the high-seas or in the eastern district of New York, and not in the southern district of New York.

4. Whether the act of March 3d, 1825, confers jurisdiction in the alternative, and enables this court to assume jurisdiction to try an indictment by reason of the fact that the defendant has been arrested in this district upon the charge in the indictment contained, by an officer of the United States, as stated in the plea, notwithstanding it appears that the defendant was first brought into the eastern district of New York.

19 On which several questions the opinions of the judges were opposed.

Whereupon, upon the request of the district attorney, and of the counsel for the defendant, that the points on which the disagreements have happened, may, during the said term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court of the United States, to be finally decided—

It is ordered that the said points of disagreement, together with the indictment, plea, demurrer, and joinder be, and they hereby are, certified according to the request of the district attorney, and of the counsel for the defendant as aforesaid, and of the act of Congress in that case made and provided.

(Signed) CH'S L. BENEDICT. [SEAL.]
(Signed) L. B. WOODRUFF. [SEAL.]

Filed Jan'y 12th, 1872.

(Indorsement on cover:) No. 607. The United States, plaintiffs, vs. John Arwo. S. New York C. C. U. S. Certificate of division. Filed 12th February, 1872.

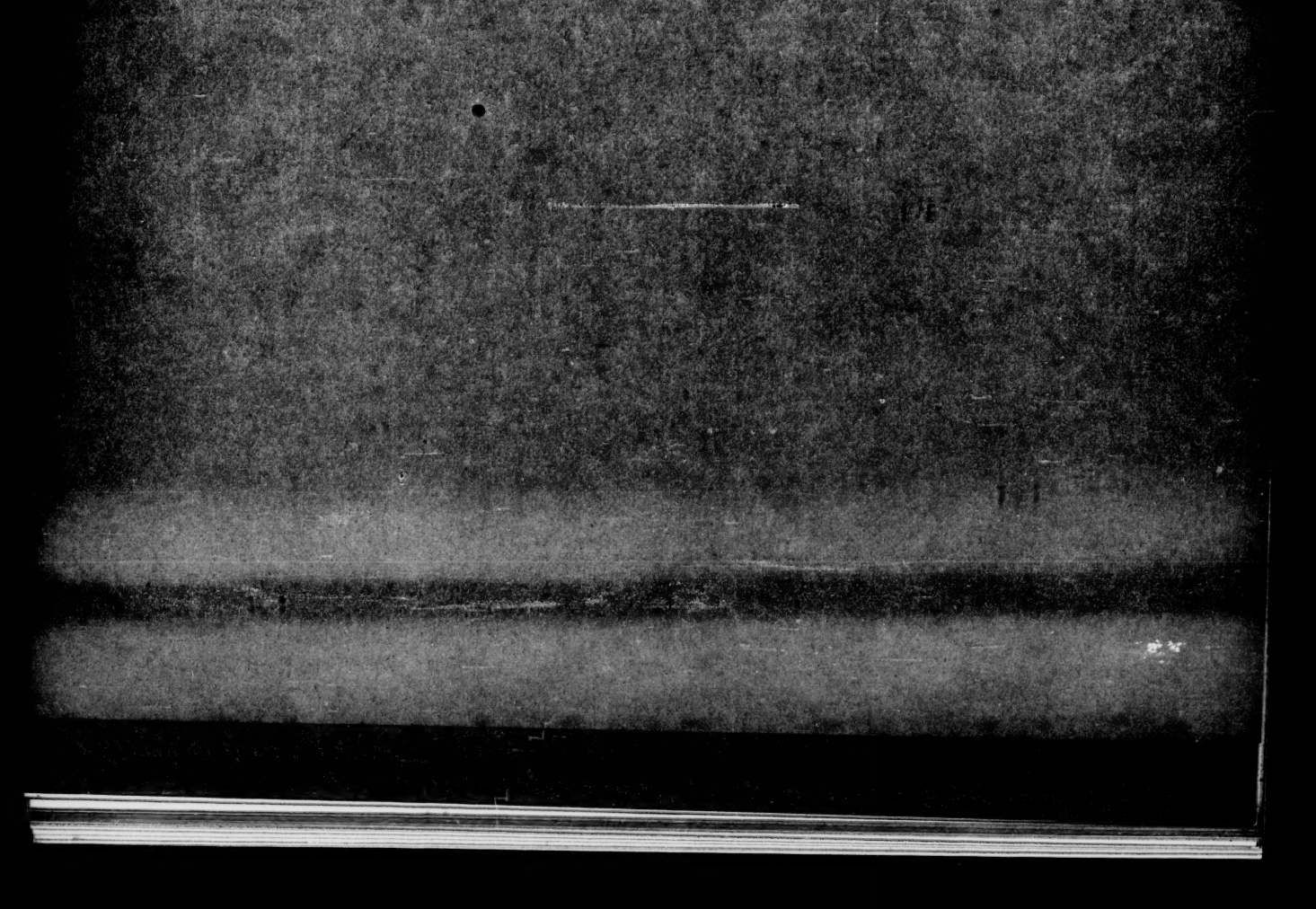
In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE UNITED STATES, PLAINTIFFS,
vs.
JOHN ARWO.
} No. 136.

ON A CERTIFICATE OF DIVISION IN OPINION BEWTEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the United States.



In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE UNITED STATES
vs.
JOHN ARWO.
} No. 136.

CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the United States.

The defendant was indicted in the Southern District of New York, for an assault committed upon the high seas, with a deadly weapon. He pleaded to the jurisdiction: alleging that, immediately upon the commission of the crime, he had been placed in irons on board ship, for custody and to be forthcoming to answer any charge therefor, and was so kept until the vessel reached the lower quarantine anchorage in New York Harbor, within the Eastern District of that State; that the vessel lay at anchor at such station for five days, during which he, being still in such custody, was delivered to the harbor-police, officials of the State of New York, in order that he might be forthcoming, &c.; and that they carried him to the city of New York, where he was delivered over to the United States marshal for the southern district of New York, to whom a warrant for his arrest, (being the first issued in this case,) was after-

wards duly issued; so that, upon the whole, he had been apprehended and brought first into the eastern, and not into the southern district, and, therefore, could be tried only in the former, and not in the latter district, &c.

The District Attorney demurred to this plea.

Upon the argument below, the following questions occurred, and the court certified *a division* thereupon.

"1. Whether the prisoner, having been taken into custody by the master of an American vessel, while on her voyage, upon a charge of having, during the voyage, committed an offense against the United States on board such ship, upon the high seas and out of the limits of any State or district, and first brought, in such custody, into the eastern district of New York, can be tried for such offense in the southern district of New York.

"2. Whether the facts stated in the plea, show that the southern district of New York, is not the district in which the defendant was apprehended within the meaning of the act of March 3, 1825.

"3. Whether the plea discloses that, within the meaning of the act of March 3, 1825, the apprehension of the defendant occurred either upon the high seas, or in the eastern district of New York, and not in the southern district of New York.

"4. Whether the act of March 3, 1825, confers jurisdiction in the alternative, and enables this court to assume jurisdiction to try an indictment by reason of the fact that the defendant has been arrested in this district, upon the charge in the indictment contained, by an officer of the United States, as stated in the plea, notwithstanding it appears that the defendant was first brought into the eastern district of New York." (Record, pp. 5, 6.)

The statute of March 3, 1825, (IV Stat., 115,) first rendered acts, like that of Arwo, crimes against the United States. The district in which such crimes may be tried is defined by a provision in the last part of Section 8 of the statute of April 30, 1790, (I Stat., 113,) as follows: "And the trial of crimes committed upon

the high seas, or in any place out of the jurisdiction of any particular State, *shall be in the district where the offender is apprehended, or into which he may first be brought.*"

Ordinarily, some court or other of the country whose peace has been broken, has jurisdiction of such breach as soon as committed. It is the constitutional privilege of the accused that the place of the breach confers exclusive court-jurisdiction. An indictment is to be preferred only there, and may be found before arrest; the latter becoming necessary to the further progress of the case, that there may be a trial and judgment.

Here, however, owing to the peculiarity of the place where the the offense occurs, court-jurisdiction is made to depend upon an event subsequent and collateral to the crime. The place of trial is to be that place in which the offender is apprehended, or into which he first may be brought.

I. The eastern district of New York consists of the counties of Kings, Queens, Suffolk, and Richmond; and by the act establishing it, (Feb'y 25, 1865, XV Stat., 438,) the jurisdiction of the court thereof over "the waters" of such counties, excepting the county of Richmond, and "all matters made or done on such waters," is concurrent with that of the court of the southern district.

The bringing of Arwo within the waters of the eastern district is a "matter done" therein.

The first question certified does not define the place to which Arwo was brought as being within that part of the eastern district over which the southern has no jurisdiction. Objections to jurisdiction must be precise. The *division* here is as to a "matter done" *in any part* of the eastern district, and, therefore, is to be settled by the above act of 1865, and not by that of 1790. There is nothing stated in the question to affect a *concurrence* of jurisdiction in the southern district and the eastern district over this offense.

For the *meaning* of the *first* question, we presume that the court cannot look beyond the certificate; Havemeyer *vs.* Iowa Co., 3 Wall., 294. The other three questions refer to the *plea* in the cause, and impliedly embody its allegations as to the place of this "matter done." We submit that these allegations do not relieve the certificate of the objection already made to the first question. Indeed the certificate is responsive in all four questions to the frame of the plea; otherwise they would be defective, as being "mere abstractions." (3 Wall., ubi supra.)

So far as material here, the words of the plea are: "The said vessel proceeded on her course and did not pass or enter within the limits of any State or district until on the 2d of June then next ensuing, on which day last aforesaid, the said vessel, being destined for the port of New York, arrived and came to anchor within the limits of the eastern district of New York, *and then* (?) and without the limits of the southern district of New York, and [then] without having entered the southern district of New York, and at a place commonly known as Lower Quarantine, and within said eastern district, was boarded and taken charge of by the local health-officer, and so remained at anchor for the space of five days."

The only fact as to the locality contained herein additional to those in the first question, is as regards "Lower Quarantine." Now this court has no judicial knowledge as to where Lower Quarantine is, except so far as located by the plea and the corresponding admission in the demurrer. (Taylor's Ev. I, p. 25.) There is no statute of New York which locates it, except by referring such location to the future action of commissioners *in pais*. (III N. Y. Statutes at Large, 387 and 404; and see V ibid., App., p. 52.) All that the court can know about it is, that it is within the eastern district, as stated in the plea; but within which one of the four counties it is, there is nothing in the law or the record to show. If the present *matter of first bringing* Arwo was so done as to confer jurisdiction upon the courts of the eastern district, then, by the act of 1865, it did so equally upon the

southern, unless it occurred within Richmond County. It was the business of the plea to draw this distinction. It has not done so. So far as we can gather from the plea, either of the following propositions is true :

(1.) Arwo was *first brought* within a part of the eastern district not at the anchorage at Lower Quarantine.

(2.) Or if *first brought* to the anchorage at Lower Quarantine, that place may be outside of the waters of Richmond County.

In either case the southern district has concurrent jurisdiction.

This plea is one of a class which must be "certain to every intent;" "that is, must have such technical accuracy as is not liable to the most subtle and scrupulous objection;" and such objection may be made under general demurrer; I Chitty Pl., (ed. 1840,) pp. 457, 234, and 663.

As a consequence of this preliminary view, we submit that because of the *concurrence* of jurisdiction above specified, the response of this court to the questions certified will be, That the first is to be answered affirmatively; and the others are to be met by a general objection that under the statements of the plea they are merely *abstractions.*

II. It may be, however, as the questions intended to be raised are of daily recurring importance, that the court will feel at liberty to express an opinion upon them, although in strictness not presented in the form intended. Hoping that this may be so, we proceed to discuss their merits.

Some courts hold that in cases presenting *both* of the local features described in that part of the act of 1790, given above (p. 2) in italics, (viz, *two* districts, one of *apprehension*, and another, that into which the accused was *first brought*,) the prosecutors have a *choice*, and may institute proceedings in either indifferently; Thompson's case, 1st Sumner, 168; Case of the Officers of the Sa-

vannah, Report of Trial, p. 368; Hick's case, ibid., 171; and Smith's case, ibid., 177, as cited by Mr. Evarts in his argument. Others, however, hold that, in such cases, there is but one place for trial, to wit, the district into which the accused is first brought; that the other district is mentioned as a place of trial only where there is in the case no district into which the accused has been *brought*, *i. e.*, *ex gr.*, in cases where, *having come voluntarily* into the United States, he is afterwards apprehended, &c.; *Ex parte* Bolleman, &c., 4, Cr., 436; Bird's case, 1st Sprague, 299; Townsend's case, cited by Mr. Larocque, Trial of Officers, &c., of the Savannah, 52.

Without pretending to weigh the respective merits of these cases in point of authority, we call attention to the fact that the case of the Savannah was well argued by counsel on both sides, (pp. 49–52, 81, 82, 117, 118, 170–82,) was decided by Mr. Justice Nelson, after patient consideration, and is a case of unusual importance; and in this connection we ask attention to the passage cited by Mr. Evarts to the presiding Justice from his own judgment in a previous case. (p. 172.)

The peculiar features of the present case are, That Arwo committed the offense on board of a private vessel on the high seas; was put in irons by the officers of that vessel, and brought by it, on its way to the port of New York, to the anchorage at lower quarantine in the eastern district of New York, at which place he was delivered to the harbor-police of the State, who carried him into the southern district, where he was apprehended by the United States marshal, and made the object of this prosecution.

In cases like *Ex parte* Bolleman, &c., *ubi supra*, it is said that the district in which an offender, under the act of 1825, was *apprehended*, has jurisdiction of the case, except such offender were *first brought* into the United States within another district *after an apprehension outside of any district.* In all these cases, the *apprehension* spoken of, or implied, is plainly an *apprehension under Federal authority*; either under its *process*, or by one of its officers authorized to apprehend. The offender,

who claims to be exempt from jurisdiction because first brought into some other district, must have been so brought *under Federal authority after an apprehension* (say, on the high seas,) *under Federal authority.* That is not the case here. Arwo was apprehended under ordinary ship-police on board of a private vessel. There is no *Federal* quality about that act. A writ of *habeas corpus* from a State judge for a party so held can not be defeated by a suggestion that he is in Federal custody. This suggestion applies as well to the *bringing.* If the party had been so arrested by the officers of a *public* vessel, or under order of a consul, or other United States official, it might be otherwise.

There is no Federal color or element in the apprehension of this offender until that by the marshal of the southern district.

But if this were otherwise, then, upon general principles, there is no reason for holding in such cases, that the act of 1870 does not give to the prosecution an unrestricted choice of districts.

Upon consideration, it seems that no advantage accrues to the defendants from one or other of the above opposing ~~considerations~~ of this act. As regards them, the provision, in any sense, is merely *positive.*

In England, where the right of offenders to a trial at the place where the offense was committed, when committed upon land, is as sacredly observed as here, in cases like the present, trial is had "in any shire or place which the commission for the trial shall authorize." (1st Russel, p. 100.) That is, no interest or right is recognized in the offender to select the place. The principle is much the same in the United States; the exception being, justly, that if the offender shall come home *voluntarily*, and repair to a permanent place of abode, as he will have to be apprehended there if at all, the trial shall be had there.

On the other hand, it seems unreasonable to say that this statute makes jurisdiction depend upon the mere accidents of *storms*, or *police regulations*, or the *breaking*

of machinery, or errors in the *calculation of course.* It were a gross miscarriage of a very reasonable policy, (that the prosecutors and witnesses should undergo the delays incident to the trial of a criminal with whom, unfortunately, they happen to have been confined on board ship, only at places where the ship's business admits of such delays without breaking up their calling,) if the words embodying that policy be held to compel these persons to lay up (ship and all) at a port of refuge from a storm, or port of repair, or, as here, at a quarantine-anchorage. Ordinarily it would be a nuisance, equally to the offender, and to the crew and others, so to construe the statute.

We therefore suggest, under this branch of the argument—That the first and fourth questions certified be answered in the *affirmative*, and the second and third, in the *negative.*

GEO. H. WILLIAMS,
Attorney-General.
S. F. PHILLIPS,
Solicitor-General.